



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, DC 20226

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## DIRECT SHIPMENT SALES OF ALCOHOL BEVERAGES

Bonded Wineries, Breweries, Importers, Wholesalers, Retailers and Others Concerned:

**Purpose.** The purpose of this circular is to inform industry members that an ATF Ruling will be published in a future issue of the Alcohol, Tobacco and Firearms Bulletin. The ruling will read substantially as follows:

The Bureau of Alcohol, Tobacco and Firearms (ATF) has recently received a number of requests from various States for our assistance in the enforcement of State alcohol beverage laws. The States are concerned with mail order, telephone, and Internet sales and shipments made directly to consumers in a State from sellers located outside the State. These transactions usually involve small quantities of wine or beer shipped by out-of-State sellers (including beer and wine of the month clubs) and, when considered individually, seem to have a negligible effect on interstate commerce. Taken in the aggregate, however, these shipments result in a substantial revenue loss to the States of the purchasers. The National Conference of State Liquor Administrators has estimated that these types of interstate sales currently amount to \$300 million annually and result in State tax revenue losses of tens of millions of dollars. The States are also concerned that shipments may be made to underage drinkers.

The States have asked ATF whether these types of transactions violate the Webb-Kenyon Act, 27 U.S.C. § 122. The States have also asked about the circumstances under which ATF will take enforcement action against these types of transactions.

**Background.** Section 202(b) of the Liquor Law Repeal and Enforcement Act, known as the Webb-Kenyon Act, was enacted relative to the adoption of the Twenty-first Amendment and is, in effect, a statutory declaration of the constitutional prohibition. The Twenty-first Amendment provides that the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is prohibited.

The Webb-Kenyon Act provides that the shipment or transportation of any beverage alcohol product, from one State into any other State in violation of any law of such State is prohibited. Neither the Twenty-first Amendment nor the Webb-Kenyon Act provide for any criminal or civil penalties for violations thereof.

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 203, requires a basic permit in order to engage in the business of importing into the United States, distilled spirits, wine or malt beverages. Likewise, a basic permit is required to engage in the business of distilling spirits or producing wine. Finally, a basic permit is required for persons who engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages. Retailers are not required to obtain basic permits under the FAA Act. In addition, 27 U.S.C. § 204(d) provides that basic permits are conditioned upon compliance with the Twenty-first Amendment and other Federal laws relating to its enforcement.

Consequently, ATF could under appropriate circumstances take administrative action against a basic permit where a basic permittee ships alcohol beverage products into a State in violation of the laws of that State. However, the extent of this authority does not extend to situations where an out-of-State retailer is making the shipment into the State of the purchaser.

**Held**, the Webb-Kenyon Act is a law relating to the enforcement of the Twenty-first Amendment and is a condition of the basic permit under 27 U.S.C. § 204(d) for violations of which ATF may suspend or revoke the basic permit.

**Held further**, ATF will respond to an official State request for assistance only where a written determination has been made by the chief administrative officer of the State liquor enforcement agency or the State Attorney General that the conduct violates State law and ATF has independently determined that the State law violation has some pronounced impact on the regulatory and/or criminal enforcement scheme of the State in question. That is, ATF will evaluate the conduct in question in relation to the proper exercise of its Federal authority over matters that necessitate Federal intervention. For example, ATF will not take action to suspend or revoke a basic permit for a violation of a local ordinance prohibiting the sale or delivery of alcohol beverage products prior to 10 a.m., when the direct shipment is delivered by a common carrier earlier than 10 a.m.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to: Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

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Director